SUPREME COURT, U. S.
APR 2 1974

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1376

CHARLES C. SPRAGUE and CHARNEL S. SPRAGUE,
Petitioners,

v.

STUART MOTOR COMPANY, t/a THAYER MOTORS,
Respondent.

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

MILFORD F. SCHWARTZ
STANLEY J. KAMINSKI
Attorneys for Respondent
1511 K Street, N. W.
Washington, D. C. 20005

Wilkes & Artis, Printers, Inc., Washington, D. C.

TABLE OF CONTENTS

Page

STATUTES AND REGULATIONS 2

QUESTIONS PRESENTED 2

COUNTERSTATEMENT OF THE CASE 3

REASONS FOR DENYING THE WRIT 5

Certiorari should be denied since respondent (seller) had a right to repossess petitioners' automobile under a valid conditional sales contract and pursuant to existing law.

CONCLUSION 8

APPENDIX:

Applicable Statutes:

Title 28, D. C. Code, Section 9-503 9
Title 40, D. C. Code, Section 902(e)(1) 9
Title 40, D. C. Code, Section 902(f) 10
Title 40, D. C. Code, Section 903(c) 11

Applicable Regulations:

D. C. Regulations governing the Business of Buying and Selling, and Financing of Motor Vehicles:

Section 501 12
Section 701 12

TABLE OF AUTHORITIES CITED

CASES:

Besner v. *Smith, et ux.*, 178 A. 2d 926 (D.C. Mun. App., 1962) 6

W. T. Walker Furniture Co. v. *Dyson*, 32 App. D.C. 90 (D.C. Cir., 1908) 6

Page

STATUTES:

Title 28, District of Columbia Code, Section 9-503 ...2, 4, 6
Title 40, District of Columbia Code, Section 902(e)(1). 2, 6
Title 40, District of Columbia Code, Section 902(f) ... 2, 4
Title 40, District of Columbia Code, Section 903(c) ... 2, 7

REGULATIONS:

District of Columbia Regulations Governing the Business of Buying, Selling, and Financing of Motor Vehicles:

Section 501 ..... 2, 6
Section 701 ..... 2, 7

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1376

CHARLIE C. SPELLERS and CHARZEL S. SPELLERS,
Petitioners,

v.

STEUART MOTOR COMPANY, t/a TRIANGLE MOTORS,
Respondent.

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

Respondent Steuart Motor Company prays that this Court deny petitioners' request that a writ of certiorari issue to the District of Columbia Court of Appeals to review that Court's decision of October 31, 1973 affirming the judgment of the Superior Court of the District of Columbia entered December 22, 1972. The opinions of both lower courts have been reprinted in the Appendix to the Petition for a Writ of Certiorari. The Petitioners concede that there are no questions of con-

stitutional magnitude involved in this case (Petition, page 5); and respondent respectfully submits that there is no substantial federal question submitted herein. At issue here is merely petitioners' unwarranted and unsupportable assertions that the two District of Columbia courts which have already heard this case erred in applying the statutory law currently in force in the District of Columbia to the facts of this case. Since the two lower Courts have rendered their decisions in accordance with the applicable local law, which law is not in conflict with the decisions of this Court, the instant Petition should be denied.

STATUTES AND REGULATIONS INVOLVED

This case involves application of the following statutes and regulations, all of which are set forth in the Appendix hereto:

Statutes:

Title 28, D. C. Code, Section 9-503
Title 40, D. C. Code, Section 902(e)(1) and (f)
Title 40, D. C. Code, Section 903(c)

Regulations:

D. C. Regulations Governing the Business of Buying, Selling, and Financing of Motor Vehicles:

Section 501
Section 701

QUESTIONS PRESENTED

1. Whether respondent automobile dealer (Seller) had a right to repossess the petitioners' (Purchasers') automobile where (1) the petitioners had purchased

said automobile pursuant to a conditional sales contract between the parties, (2) the petitioners had become at least two months delinquent in their monthly payments, (3) said delinquency constituted a violation of the said conditional sales contract, and (4) the said conditional sales contract expressly provided that upon the purchasers' delinquency, the seller may repossess said vehicle.

2. Whether the trial court was correct in its ruling that paragraph 8 of the subject conditional sales contract conformed to and was not in violation of the laws of the District of Columbia.

COUNTERSTATEMENT OF THE CASE

On July 14, 1969, petitioners and respondent entered into a conditional sales contract (R. 2) under the terms of which respondent purchased a new 1969 4-door Ford LTD automobile. Petitioners were to make monthly payments of $108.28 on the 28th day of each month until the balance of the purchase price and finance costs were paid. Paragraph 8 of the said conditional sales contract provides:

> '8. In case he shall fail to pay any installment as herein agreed, or shall fail to perform any of the covenants herein contained on his part to be performed then the Purchaser consents that in any of such events, at the election of the Seller, all unpaid balance of said contract price and any other obligations shall forthwith be and become due and payable, and all payments theretofore made shall belong to and be retained by the Seller as liquidated damages for the non-fulfillment of this contract and Purchaser further agrees to deliver Car to the Seller immediately and upon his failure to do so Seller may, without notice or demand for performance or legal process, lawfully

> without breach of peace enter upon the premises where Car may be and remove same. Seller may take possession of any other property in Car at the time of repossession, wherever such other property may be therein, and hold same temporarily for Purchaser without liability on the part of Seller. Subject to law, Car may be sold with or without notice at private or public sale, at which the Seller hereof may be the Purchaser with or without having Car at the sale; the proceeds of such sale shall be applied to the actual costs thereof, the actual costs of repossession, reasonable repair and storage, and to any amount payable hereunder; Purchaser shall be liable to pay any remaining balance forthwith as liquidated damages for the breach of this contract and shall receive any surplus."

Throughout this litigation, as they did in their Petition in this Court, at page 10, petitioners have admitted that they were at least two months delinquent in their monthly installment payments at the time of repossession, and there has never been an issue over the fact that the respondent's repossession of the subject motor vehicle was the consequence of this delinquency. Repossession was effected overnight without a breach of the peace, while the automobile was parked on the street (see Transcript of deposition of Petitioners, pages 11, 12). Both parties also admitted that the petitioners redeemed the subject vehicle on February 11, 1972, the day following repossession (page 11 of Transcript of Deposition). Petitioners have argued and still maintain that the subject conditional sales contract is in violation of Section 40-902(f) of the D. C. Code (1967 Edition); that the Uniform Commercial Code relating to repossession (Title 28 D. C. Code, Section 9-503) is "subordinate to" the District

of Columbia Automobile Financing Act (Title 40 D. C. Code, Section 901 *et seq.*) and the rules and regulations promulgated thereunder; that respondent Steuart Motor Company violated the applicable law; and that therefore the petitioners should be awarded damages, including punitive damages. Respondents never offered proof, by affidavit or otherwise, that any action of Steuart Motor Company was taken maliciously or in a willful attempt to deprive petitioners of their property.

It should be noted further that although upon redemption of the automobile, male petitioner executed a release of the respondent on behalf of himself and his wife, the validity of this release was not the basis for the trial court's granting of summary judgment to respondent. The basis of the trial court's opinion was the admitted delinquency of the petitioners as being a breach of paragraph 8 of the lawful conditional sales contract.

REASONS FOR DENYING THE WRIT

Respondent Had a Right To Repossess Petitioners' Automobile Under the Valid Conditional Sales Contract and Pursuant To Existing Law

There was no question but that respondents were at least two months delinquent in their monthly payments at the time of the repossession (Petition, page 10). This being the case, respondent, in an effort to protect its collateral, seized this vehicle (see Affidavit of Frederick Donald Cissel, R. 38 and 39). Repossession was accomplished pursuant to paragraph 8 of the conditional sales contract (quoted, *supra*), and was accomplished as noted above without a breach of the peace. The law in the District of Columbia is well

settled that where, as in this case, a conditional vendee is in default and the provisions of the conditional sales contract provide for the peaceable repossession of the subject merchandise, the conditional vendor has a perfect right to repossess the merchandise. *W. T. Walker Furniture Co.* v. *Dyson*, 32 App. D. C. 90 (D.C.Cir., 1908); *Besner* v. *Smith, et ux*, 178 A. 2d 926 (D.C. Mun. App., 1962). The applicable statutory law, Title 28:9-503 [1] and Section 501 of the District of Columbia regulations governing the businesses of buying, selling, and financing motor vehicles [2] provide further substantial legal authority for the action taken in this case by respondent Steuart Motor Company. It is submitted that, contrary to petitioners' contention, the aforesaid regulations, which were promulgated pursuant to Title 40, D. C. Code, Section 902(e)(1), are neither inconsistent with nor do they take precedence over the Uniform Commercial Code, Title 28, Section 9-503 of the D. C. Code.

In short, the lower courts were correct in holding that the provisions of the subject conditional sales

---

[1] "Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action . . ."

[2] "When a buyer is in default in the payment of any sum due under the instrument of security, or in the performance of any other condition which it lawfully requires him to perform in order to obtain title to the motor vehicle, or in the performance of any promise the breach of which is, by such instrument, expressly made a ground for repossessing such motor vehicle, the holder may repossess the motor vehicle. Unless the motor vehicle can be repossessed without a breach of the peace, it shall be repossessed by legal process. Nothing herein shall be construed to authorize a violation of the criminal law."

contract are legal and that the repossession in this case lawfully was made pursuant thereto.

As a reason for granting the Writ of Certiorari, petitioners contend that inasmuch as the respondent's salesman's license number was inadvertently omitted from the conditional sales contract (although his name, Gandy, appeared thereon) [R. 2], the said contract is void and, therefore, the petitioners are entitled to $4,551.74 as damages from respondent.[3] Respondent is unaware of any statutory, regulatory, or case law in support of petitioners' argument and petitioners have cited none. Section 701 of the applicable regulations provides for administrative sanctions for willful violations of the regulations, but does not provide for the voiding of any contractual obligations. All of the applicable law is contrary to petitioners' assertions, as was correctly determined by the two lower courts. Moreover, petitioners have not been "aggrieved"[4] by the inadvertent omission of the salesman's number from the contract; rather it was the *repossession* of the vehicle that was the basis of this lawsuit, a repossession which fully conformed to and was authorized by law.[5]

With respect to the petitioners' argument ("C" at page 15 of the Petition) that they did not receive proper credit for the finance rebate upon redemption, this Court's attention is respectfully directed to the Affidavit of Frederick Donald Cissel, which affidavit was annexed to respondent's Motion for Summary

[3] See reason "(A)", at page 13 of the Petition.

[4] See Title 40 D.C. Code, Section 903(e).

[5] Petitioners' second reason for granting the writ, "(B)", at page 14 of the Petition, concerning the car invoice is similarly without merit.

Judgment (R. 38, 39), evidencing that petitioners, in fact, received full and proper credit. Respondents did not offer any evidence to contest Mr. Cissel's sworn statements; they merely have repeated their unfounded and false accusations in three Courts.

Petitioners' fourth reason for granting the requested Writ, that the release of respondent executed by male petitioner did not bind the female petitioner (see "(D)" at page 15 of the Petition) is simply without merit since a simple reading of Judge Hamilton's December 22, 1972 Memorandum Opinion reveals that the Court did not rely on the said release in arriving at its decision.

Respondent respectfully submits that the two lower Courts properly have construed the applicable local law and applied same to the facts in this case.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari to the District of Columbia Court of Appeals should be denied.

Respectfully submitted,

MILFORD F. SCHWARTZ
STANLEY J. KRIEGER
Attorneys for Respondent
1511 K Street, N. W.
Washington, D. C. 20005
Tel. No. 783-1326

APPENDIX

APPLICABLE STATUTES:

Title 28, District of Columbia Code, Section 9-503

"Secured party's right to take possession after default.

Unless otherwise agreed a secured party has on default the right to take possession of the collateral. In taking possession a secured party may proceed without judicial process if this can be done without breach of the peace or may proceed by action. If the security agreement so provides the secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties. Without removal a secured party may render equipment unusable and may dispose of collateral on the debtor's premises under section 28: 9-504. (Dec. 30, 1963, 77 Stat. 766, Pub.L. 88-243, § 1, eff. Jan. 1, 1965)."

Title 40, District of Columbia Code, Section 902(c)(1)

"The Council is hereby authorized to make, and the Commissioner is authorized to enforce, such regulations as the Council in its discretion deems appropriate to carry out the purposes of this section and to prevent unconscionable practices in connection with retail installment transactions, including, without limitation, provisions:

"(i) governing the form and substance of instruments of security;

"(ii) requiring that installment payments under instruments of security be made in substantially equal amounts and at regular intervals except (1) that the interval for the first installment payment may be longer than the other intervals; (2) that the final installment payment may be less in amount than the preceding in-

stallment payments; (3) that where a buyer's livelihood is dependent upon seasonal or intermittent income, one or more installment payments in the schedule of payments included in any such instrument of security may be reduced or omitted; and (4) that any contract covering a new motor vehicle to be used primarily as a demonstrator sold to a bona fide motor-vehicle salesman employed by the seller shall be exempt from the requirement that installment payments be in substantially equal amounts;

"(iii) requiring that amounts due under instruments of security may be prepaid in full and that the unearned charges, whether for finance, insurance, or for other purposes, attributable to or resulting from such prepayments shall be refunded or credited;

"(iv) establishing maximum delinquency, collection, repossession and other charges;

"(v) specifying the types and maximum amounts of insurance which may be required, at the expense of the retail buyer, to protect from loss the seller in a retail installment transaction or his assignee or any other person entitled to payments from a retail buyer under an instrument of security;

"(vi) respecting the manner and methods of the sale or disposition of repossessed motor vehicles under such conditions, including without limitation, rights of redemption, as the Council deems advisable;

"(vii) requiring the books and records of persons engaged in the business of financing retail installment transactions to be subject to production for examination by the Commissioner."

Title 40, District of Columbia Code, Section 902(f)

"No provision shall be inserted in any retail installment contract whereby the buyer waives or purports to waive any provision of this chapter, and any such waiver or purported waiver shall be void and of no

effect. The Council is authorized in its discretion, by regulation (1) to prohibit the inclusion in any retail installment contract of any provision waiving or purporting to waive any provision of any regulation promulgated by the Council relating to retail installment transactions, and (2) to provide that any such waiver or purported waiver, shall be void and of no effect. (Apr. 22, 1960, 74 Stat. 69, Pub.L. 86-431, § 2.)"

Title 40, District of Columbia Code, Section 903(c)

"Any person aggrieved by the violation of any law or regulation applicable to the licensee's conduct of the licensed activity shall have, in addition to his right of action against such licensee, a right to bring suit against the surety on a bond authorized by this section, either alone or jointly with the principal thereon, and to recover in an amount not exceeding the penalty of the bond any damages sustained by reason of any act, transaction, or conduct of the licensee, or of any officer, agent, employee, or other person acting on behalf of said licensee, which is in violation of law or regulation in force in the District relating to the licensed activity. The provisions of the second, third, and the fifth subparagraphs of paragraph (b) of section 1-244, shall be applicable to each bond authorized by this section as if it were the bond authorized by the first subparagraph of such paragraph (b) of section 1-244: *Provided*, That nothing in this subsection shall be construed to impose upon the surety on any such bond a greater liability than the total amount thereof or the amount remaining unextinguished after any prior recovery or recoveries. (Apr. 22, 1960, 74 Stat. 71, Pub.L. 86-431, § 3.)"

APPLICABLE REGULATIONS:

District of Columbia Regulations Governing the Business of Buying, Selling, and Financing of Motor Vehicles:

Section 501. Repossession Authorized

"When a buyer is in default in the payment of any sum due under the instrument of security, or in the performance of any other condition which it lawfully requires him to perform in order to obtain title to the motor vehicle, or in performance of any promise the breach of which is, by such instrument, expressly made a ground for repossessing such motor vehicle, the holder may repossess the motor vehicle. Unless the motor vehicle can be repossessed without a breach of the peace, it shall be repossessed by legal process. Nothing herein shall be construed to authorize a violation of the criminal law."

Section 701. Penalties

"Any person who violates any provision of these regulations made pursuant to the Act of Congress approved April 22, 1960 (Public Law 86-431, 74 Stat. 69) shall be punished by a fine not exceeding $500 or by imprisonment for not more than six months, or both. Any person violating any other provision of these regulations shall be punished by a fine of not more than $300 or imprisonment for not more than 90 days."